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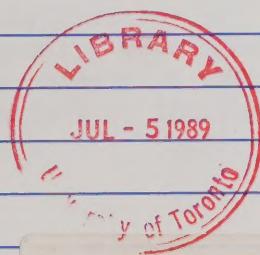
No. 3
June, 1989

Program of Compliance

Director of Investigation
and Research

Competition Act

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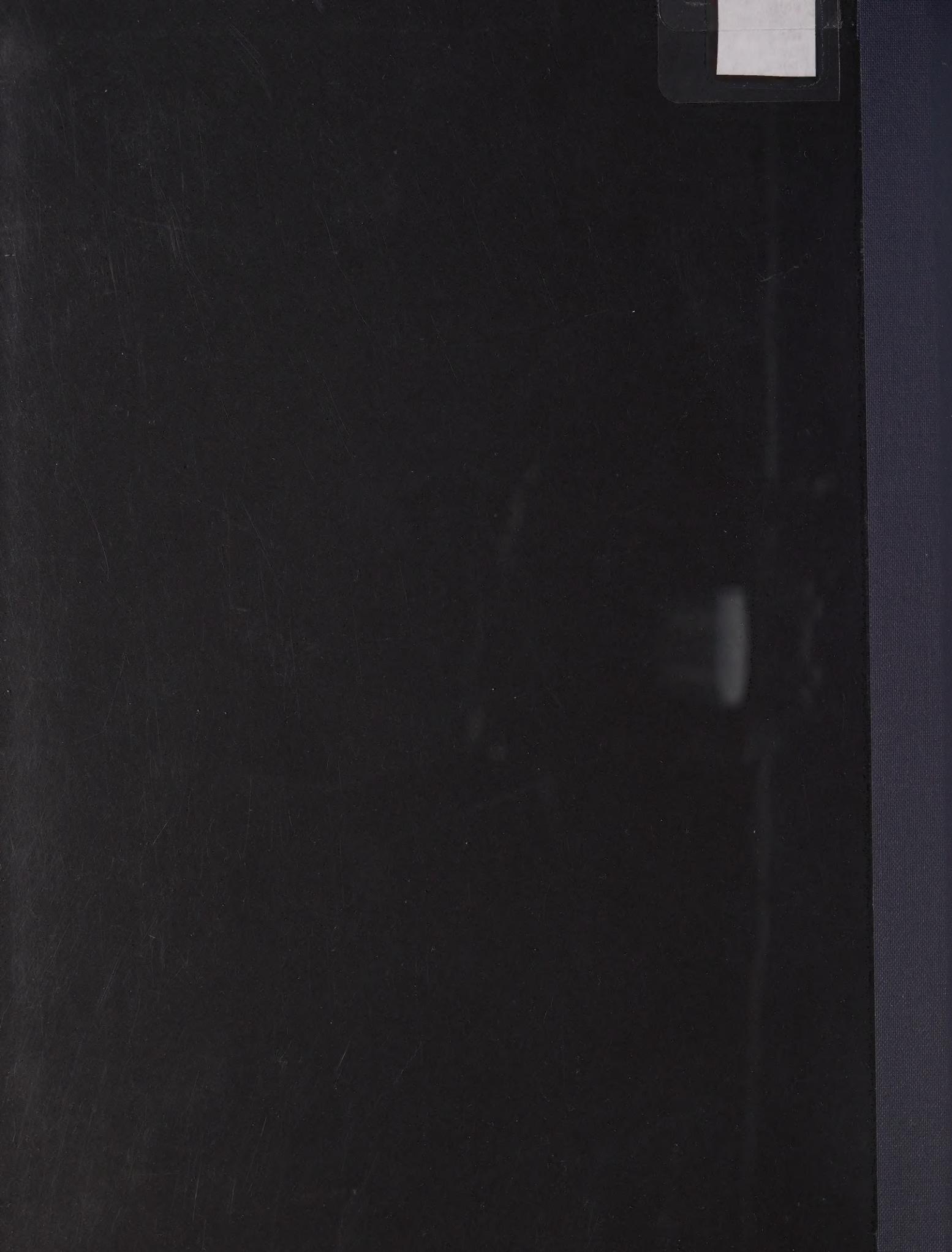


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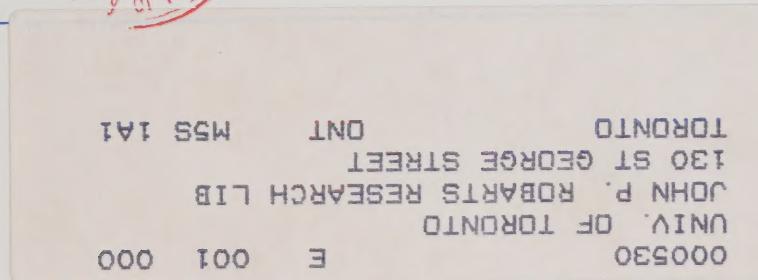
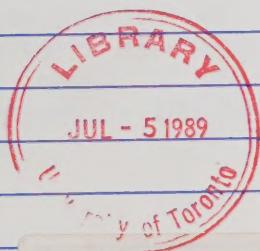
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The Director of Investigation and Research has responsibility for administering and enforcing the Competition Act, legislation which is designed to maintain and encourage competition in Canada. This Bulletin provides information on the approach taken by the Director to promote and to ensure compliance with the provisions of the Competition Act.

The Director is the head of the Bureau of Competition Policy which is a part of the federal Department of Consumer and Corporate Affairs. Because the Competition Act confers powers and duties on the Director and not on the Bureau, this Bulletin makes frequent reference to the Director. Readers should be aware, however, that many of the activities ascribed to the Director in this Bulletin may be carried out on his behalf by a Deputy Director of Investigation and Research appointed under the Act, or by members of the Director's staff employed in the Bureau of Competition Policy.

This Bulletin provides practical guidance on the Director's current compliance policy and is not intended to be a binding statement of the Director's position in any particular case. Individual enforcement decisions are made based upon the particular circumstances of each case. Readers should refer to the Competition Act when questions of law arise.

To obtain additional copies of this bulletin or additional information on the subjects discussed in it, readers may contact the Compliance and Coordination Branch of the Bureau of Competition Policy, Consumer and Corporate Affairs Canada, Ottawa, Ontario, K1A 0C9, telephone (819) 994-0798. Alternatively, readers may contact one of the offices listed at the end of this Bulletin at the address or phone number provided.

Calvin S. Goldman, Q.C.
Director of Investigation
and Research
Bureau of Competition Policy



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INTRODUCTION AND OVERVIEW

The purpose of the Competition Act, as stated in section 1.1 of the Act is:

"... to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices."

The Director of Investigation and Research is responsible for ensuring that the Act is enforced in a fair, effective and timely manner. Historically, enforcement of the Act and the deterrence of anticompetitive activity has focussed on the investigation of violations of the Act with a view to prosecution and the imposition of criminal penalties. This approach will continue to be a primary method of enforcement in various instances. However, it has become clear that in other instances the goals of maintaining and encouraging competition can be pursued with greater effectiveness and certainty, and with less time and expense, through an approach to enforcement which:

- o stresses the promotion of continuing voluntary compliance with the Act; and

- o relies on a broader range of responses to non-compliant behaviour including, but not limited to, contested proceedings.

The Director believes that the majority of business persons will respect the Competition Act if they understand how it applies to their business affairs. Therefore, he attempts to encourage general compliance with the Act through a program of communication and education. In addition, he facilitates compliance in particular situations through advisory opinions, information contacts and advance ruling certificates.

The Director complements his efforts to encourage and facilitate compliance with careful monitoring of conduct in the marketplace. When he believes that there has been a violation of the Act, or that he has grounds to seek a remedial order relating to a reviewable matter, he can choose from a broad range of instruments to resolve cases, ranging from investigative visits to contested proceedings. The flexibility provided by this approach enables the Director, in enforcing the Act:

- o to address matters using the most effective means, and
- o to focus resources on cases of greater potential economic significance, consumer benefit or deterrent effect.

This Bulletin describes the four principal components of the Director's compliance approach:

- o encouraging compliance with the Act through a program of communication and education,
- o facilitating compliance with the Act through advisory opinions, information contacts and advance ruling certificates,
- o monitoring compliance with the Act, and
- o responding to possible violations of the Act and reviewable matters through a variety of instruments available to resolve cases.

ENCOURAGING COMPLIANCE

The Director recognizes that compliance with the Competition Act can best be achieved when business persons have a sound understanding of the provisions of the Act. Therefore, he places a great deal of emphasis on communication and education to foster a better understanding of the Act and its application.

The Communication and Education Program

The Director and senior staff of the Bureau undertake speaking engagements throughout the year on a variety of subjects relating to the Act. Bureau staff will, on request, conduct seminars for businesses and associations on topics of particular interest to them. Seminars have addressed such topics as the detection and prevention of bid-rigging when calling for tenders, notification and review procedures for large mergers and the

preparation of promotional materials to conform to the misleading advertising provisions of the Act. In addition, the Bureau occasionally staffs information booths at trade shows across the country to discuss the Act and to provide informal advice on its application.

The Bureau also makes several publications available through the offices listed at the end of this Bulletin. The following are now, or will be, available:

- o Information Bulletins which provide an outline of specific provisions of the Act and its administration. In addition to this Bulletin, there are two other Information Bulletins currently available: the first on the Merger Provisions and the second on Advance Ruling Certificates. The subject of an upcoming Bulletin will be the efficiency exception in merger review, and others will be released in the near future.
- o Interpretation Bulletins which will contain summaries of Advisory Opinions, written in a manner which protects confidential information such as the parties' identities. The focus on specific examples should make these Bulletins a useful supplement to the more general Information Bulletins.
- o The Misleading Advertising Bulletin which contains information relating to the misleading advertising and deceptive marketing practices

provisions of the Act. It also includes a list of convictions under those provisions, detailed comments on or interpretation of specific provisions and summaries of advisory opinions of general application to advertisers.

- o The Director's Annual Report to the Minister of Consumer and Corporate Affairs which contains information about proceedings under the Act during the previous year. This report is tabled in Parliament.
- o Press releases outlining the assessment and resolution of certain cases.
- o Speeches made by the Director and senior staff of the Bureau, a list of judgments relating to the Competition Act and the Merger Pre-notification Information Kit.

FACILITATING COMPLIANCE

The general education and communication program of the Director is supplemented with advisory opinions and information contacts which are designed to facilitate compliance with the Act in particular situations. Advance Ruling Certificates are also available for parties to a proposed merger who wish assurance that the merger will not give rise to proceedings under the merger provisions of the Competition Act.

Advisory Opinions

The Director facilitates compliance by providing advisory opinions to those

who wish to avoid coming into conflict with the Act. Under this program, which was formerly known as the Program of Compliance, the Director invites company officials, lawyers and others to request an opinion on whether the implementation of a proposed business plan or practice would give him grounds to initiate an inquiry under the Act. Opinions take into account previous jurisprudence, previous opinions and the stated policies of the Director. Those who seek an opinion are not bound by the advice provided and remain free to adopt the plan or practice in question on the understanding that the matter may be tested before the Competition Tribunal or the courts. Similarly, the Director cannot bind himself or his successors by giving an opinion. In addition, advisory opinions are given in relation to a specific set of facts. Should the details of the proposed plan differ when implemented from the plan presented to the Director, or should conditions change in a way that would alter the impact of the proposed plan on the market, the matter could be subject to further examination.

For example, the Director may provide an advisory opinion to:

- o A company that wants to know whether the conditions of a proposed rebate policy would violate the price discrimination provisions of the Act.
- o A company that would like to stop dealing with a particular customer and is unsure whether this would

cause the Director to commence an inquiry.

- o A company that would like to ensure that a performance claim which it intends to make in its advertisements does not violate the misleading advertising provisions of the Act.
- o An association of purchasers who are uncertain whether proposed group buying activities would raise questions under either the price discrimination or conspiracy provisions of the Act.
- o An association of fishermen who wonder whether a proposed contract is subject to the Act.

In each of these situations the Director may provide an opinion on whether the implementation of the proposed business plan or practice would give him grounds to commence an inquiry under the Act. The Director may also provide a subsequent opinion in response to revised proposals.

In order to provide an informed opinion, the Director requires adequate disclosure of the material facts relating to the proposed plan. The more complete and more accurate the information provided, the less qualified the opinion will be and the less likely it is that the matter would be subject to further examination because of new information received. As a general rule, persons requesting an opinion in relation to a proposed plan or practice should provide a

complete description of the companies and the products involved in the proposed plan, the competition faced by the company, including an estimate of the market share of the company and each of its competitors, and a description of the markets that might be affected by the plan. In particular, they should describe the possible effects of the plan on current or potential customers, suppliers and competitors. Different information will likely be required to obtain an opinion on the misleading advertising or deceptive marketing practices provisions of the Act.

Requests for opinions on a "no names" basis or without the usual supporting information may be accepted. However, these opinions may be of limited value as the reliability of opinions depends on the extent of information provided. The necessary caveats will be added to these opinions.

Advisory opinions may be provided orally or in writing. Oral opinions can generally be provided relatively quickly. Written opinions may take considerably longer to prepare, depending on the complexity of the issues involved and the resources available at the time.

Information Contacts

The Director may initiate an information contact when he is of the opinion that a person may be unaware of a particular provision of the Competition Act or of its application. For example, should the Director become

aware that the parties to a proposed merger intend to close before there is an opportunity for a review of the merger or one aspect of it under the Competition Act, he may choose to inform the parties of the provisions of the Act and their implications. Should the Director receive a first-time complaint about a retailer allegedly selling products above the advertised price, he may choose to facilitate compliance by contacting the retailer to explain how the provisions of the Act apply to his advertising and pricing. Persons contacted are not under any obligation to justify their conduct or even to discuss the matter with the Director, but may choose to take advantage of the opportunity to do so. Following an information contact the Director may decide to continue his examination, monitor the conduct in question for a reasonable period of time or close the file.

Advance Ruling Certificates

Persons who are planning a merger may wish to seek some assurance from the Director that the transaction they are contemplating will not be challenged by the Director. Under section 102 of the Act, the Director may issue an advance ruling certificate when he is satisfied by a party or parties to a proposed transaction that he would not have sufficient grounds on which to apply to the Competition Tribunal under section 92 of the Act for a remedial order. If the Director decides not to issue a certificate for a proposed merger, he can, nevertheless, provide an advisory opinion indicating his views on the

proposed merger. Readers will find more detailed information on these certificates in Information Bulletin No. 2, on Advance Ruling Certificates.

MONITORING COMPLIANCE

Despite efforts to increase compliance with the Competition Act on a voluntary basis, instances of non-compliance will continue to arise. For this reason, Bureau staff monitor conduct in the marketplace so that the Director will be aware of possible violations of the Act and reviewable matters which may be subject to Part VIII of the Act. The staff of the Bureau rely on a number of information sources including:

- o complaints received from business persons, consumers, government departments and others,
- o material submitted pursuant to undertakings or to orders of the Competition Tribunal or the courts,
- o material submitted pursuant to the notifiable transactions provisions of the Act,
- o other sources of information such as industry contacts, news reports and trade journals.

Advance Notification of Mergers

The notifiable transactions provisions of the Act require persons who are proposing certain large acquisitions, amalgamations or combinations to notify the Director before completing their transaction and to supply him with

certain information. The notification requirements come into effect when two thresholds are exceeded. The first threshold involves the size of the parties to the transaction and the second the size of the transaction. Both thresholds are specified in the Act and the transaction threshold, in part, depends on the nature of the proposed transaction. These provisions facilitate the Director's monitoring efforts by enabling him to examine certain transactions before they are completed in order to determine whether they raise an issue under the Act and bring an application for injunctive relief if necessary.

The conditions under which a party is required to notify the Director and the information requirements in such circumstances are described in more detail in the Merger Prenotification Information Kit.

It should be noted that the issuance of an Advance Ruling Certificate for a proposed transaction provides an exemption from the notifiable transactions provisions.

Most mergers proceed unchallenged but the Director may decide to monitor the actual effects of a merger during the three-year period within which he is statutorily permitted to challenge completed mergers. Proceeding in this fashion allows the Director to monitor the actual effects of the merger on the market and to respond quickly should circumstances arise that would provide grounds under the Act to take remedial steps in relation to the merger.

THE ENFORCEMENT PROCESS

In order to provide a clear perspective on the role of the Director in facilitating and monitoring compliance and responding to non-compliance, it may be useful to describe briefly the enforcement process.

Matters which the Director pursues proceed through one or more distinct stages. Normally the Director begins with a preliminary examination of a matter to determine whether it raises a question under any of the provisions of the Act. At this stage, the Director may decide not to pursue the matter if in his opinion further examination is not justified. If a possible issue under the Act is identified, he may proceed with an information contact or further examination of the matter.

If, upon further examination, the Director believes on reasonable grounds that an offence under Part VI or VII of the Act has been or is about to be committed, that grounds exist for the Tribunal to make an order relating to a reviewable matter under Part VIII of the Act, or that a person has contravened or failed to comply with an order made under the Act, he is obliged to commence an inquiry into all such matters as he considers necessary to determine the facts. The Director is also obliged to commence an inquiry when the Minister of Consumer and Corporate Affairs directs him to do so or when six Canadian residents make an application in accordance with section 9 of the Act.

Once he has commenced an inquiry, the Director can apply for authorization from a court to search for and seize records, to conduct oral examinations and to exercise the other investigative powers provided by the Act. He may also enter into discussions with the Attorney General of Canada on appropriate consideration that might be extended to individuals who voluntarily provide information or evidence with respect to a matter at an early stage. Such consideration, particularly any possibility of immunity from prosecution, can only be granted by the Attorney General.

At any stage of an inquiry relating to the criminal law provisions of the Act, the Director may refer a matter to the Attorney General of Canada for consideration as to whether an offence has been or is about to be committed and for such action as the Attorney General may wish to take. When the Director refers a matter to the Attorney General, he normally includes a recommendation as to the action the Attorney General should take. The Attorney General nevertheless retains complete discretion as to the action he may take.

In the case of an inquiry into a reviewable matter covered by Part VIII of the Act, the Director may apply to the Competition Tribunal for a remedial order.

The Director may discontinue an inquiry at any stage if, in his opinion, further inquiry is not justified. The Director is required to make a report

in writing to the Minister on any inquiry that is discontinued. If the inquiry was commenced as a result of a six-resident application under section 9, the Director must inform the applicants of the decision and the grounds for the discontinuance. The Minister may, on the written request of applicants under section 9 or on his own motion, review the Director's decision and, if in his opinion the circumstances warrant, instruct the Director to make further inquiry.

The Director has a public responsibility to allocate his resources efficiently in light of the stated purpose of the Act. In determining which matters require more attention, the Director is influenced by a number of considerations such as the nature and character of the conduct in question, its impact on the economy as a whole or on particular markets within it, its effect on individual consumers and businesses, and the likely deterrent effect of successful proceedings.

RESPONDING TO SITUATIONS OF NON-COMPLIANCE

When the Director believes on reasonable grounds that a violation of the Act has been or is about to be committed, that he has grounds to seek a remedial order relating to a reviewable matter, or that a person has contravened or failed to comply with an order under the Act, a number of instruments to resolve cases are available. These instruments include investigative visits, undertakings, orders on consent and contested proceedings.

Instruments to Resolve Cases

Investigative Visits

At any stage of an inquiry the Director may contact a person alleged to be involved in anticompetitive conduct in order to obtain information. If the information obtained persuades the Director that further inquiry is not justified, he will discontinue the inquiry. The Director may also resolve certain cases after an investigative visit, when he decides that further inquiry is not warranted because of voluntary corrective action. The types of cases that could be resolved in this fashion may include those of lesser economic consequence and those involving certain vertical restraints of trade in which correction of the practice can be readily verified.

Undertakings

The Director may, in certain circumstances, accept written undertakings which obviate the need to make an application to the Competition Tribunal or refer a matter to the Attorney General. Undertakings have been accepted by the Director since the 1960s, and are based upon the scope of enforcement discretion conferred on the Director by various sections of the Act.

Undertakings are designed to remedy or overcome the effects or potential effects of an anticompetitive course of action. For example, a company might undertake to refrain from certain behaviour or to engage in certain

activities which would resolve the Director's concerns under the Act. In a merger case, for example, the persons under inquiry might undertake to restructure the merger by disposing of certain assets or shares within a certain period of time. Once undertakings have been given and complied with, the Director may either discontinue the inquiry or continue to monitor conduct in the markets affected for a reasonable period of time.

Orders on Consent

When referring a potential offence to the Attorney General of Canada, the Director may recommend that the Attorney General seek a prohibition order on consent under subsection 34(2) of the Act. This is not a new procedure and has, in fact, been used to resolve several matters pursued under the provisions of the Combines Investigation Act and the Competition Act. The Director supports the increased use of such orders in a wider range of situations as a means of providing effective and timely remedies for certain types of conduct.

When a Court issues an order under subsection 34(2) of the Act, the parties need not plead guilty and do not stand convicted and no fine or other sentence is imposed. This procedure also avoids the costs of protracted litigation.

In circumstances where the Director is of the view that it is appropriate to seek a conviction and fine in addition to a prohibition order, the

Director may recommend that the Attorney General proceed under subsection 34(1) of the Act.

Whether the Director will recommend proceeding under either subsection 34(1) or 34(2) will depend on the facts in each case and on an assessment of the factors listed in the next section of this Bulletin. Orders of the court under subsection 34(1) or 34(2) may be issued with or without the consent of the parties.

A decision to seek a prohibition order as a means to resolve a case is at the discretion of the Attorney General. Representatives of the Attorney General normally consult the Director concerning such matters as the appropriate terms of a proposed order. Ultimately it is for the court to decide whether a proposed order should be imposed in the circumstances of a particular case.

The Competition Act also specifically provides for the resolution of reviewable matters through the use of consent orders where application has been made to the Competition Tribunal. Under section 105 of the Act, the Tribunal may make an order, without hearing the evidence usual in a contested application, in any matter where the Director and the respondents have reached agreement on the terms. The issuance of a consent order is ultimately at the discretion of the Competition Tribunal. The Director supports broader use of section 105 orders, wherever circumstances warrant, to achieve effective, timely and less costly case resolution.

The Director is of course aware of the need to monitor compliance with prohibition orders and orders of the Tribunal to ensure that their potential benefits are realized.

Contested Proceedings

The Director may refer matters involving alleged offences to the Attorney General of Canada with a recommendation to apply for a prohibition order under subsection 34(2) of the Act or to institute a criminal prosecution. In appropriate cases, the Director may recommend that the Attorney General consider proceeding against individuals as well as companies. Normally, counsel for the Attorney General consults with the Director to determine the fine, prison term or prohibition order which should be sought upon a conviction.

In cases involving reviewable matters, the Director may apply to the Competition Tribunal for a remedial order. Any person who would be subject to the order sought may contest the application. Provincial attorneys general are entitled to intervene in certain proceedings before the Competition Tribunal and other persons may be permitted to intervene.

Choice of Instrument to Resolve Cases

The resolution of each case is determined individually, on its own merits, in light of the objectives of the Competition Act. However, it is the Director's general intention to make greater use of the alternative case

resolution instruments wherever appropriate. In such circumstances cases might be thus resolved in an effective manner that may also prove more timely and less costly than resorting to contested proceedings before the courts or the Competition Tribunal. In this regard the Director makes every effort to ensure that the case resolution principles discussed in this Bulletin are applied on a fair and consistent basis.

This greater reliance on alternative case resolution instruments should not be seen in any way as an indication that the Director will be any less vigorous in recommending that the Attorney General initiate a prosecution, or in filing applications before the Tribunal for remedial orders when these responses are deemed appropriate in circumstances of non-compliance.

Rather, the compliance-oriented approach adopted by the Director will enable him to apply his resources more effectively in relation to the more significant cases. The Director believes that this approach will deter anticompetitive behaviour and encourage future compliance with the Act.

The Director views conspiracy, bid-rigging and the abuse of dominant position as matters that should normally be addressed through prosecution or an order of the courts or the Tribunal. Having regard to the inherent nature and potential significance of these types of cases, it is unlikely that the Director would

entertain the use of investigative visits or undertakings as resolution instruments in cases involving these matters, barring exceptional circumstances.

In respect of mergers, the Director's compliance preference is for a fix-it-first approach, that is to say, restructuring of a transaction before closing so as to alleviate competition concerns. In the event that certain features of the transaction cannot be remedied until after the transaction is completed the Director may exercise his discretion to apply to the Tribunal for a consent order or accept undertakings.

In determining the most appropriate means by which to resolve cases, the Director will examine the merits on a case-by-case basis and consider which means of resolution is most consistent with the objectives of the Competition Act. It is, therefore, difficult to provide specific guidelines to describe the types of cases that might be resolved using a particular instrument. However, there are some general factors which the Director may take into account in his deliberations as to the most appropriate course of action. The list below is neither exhaustive nor does it place the factors in order of importance.

- o Is there a history of anticompetitive activity?
- o Does the conduct involve a contravention of a prohibition order or a Tribunal order or a failure to

comply with a previous undertaking or to take voluntary corrective action?

- o Has the conduct in question significantly affected competition or is it likely to significantly affect consumers, competitors, suppliers or others?
- o Was the conduct in question in keeping with the corporate policy of the companies involved? If not, was the conduct terminated as soon as senior company officials became aware of it?
- o Has the Director previously provided an advisory opinion or an information contact on the conduct in question?
- o Have the persons involved attempted to remedy the adverse effects of their conduct?
- o In what other respects does the conduct in question bear directly on one of the stated objectives of the Act. For example, has the conduct in question reduced opportunities for Canadian participation in world markets?
- o Which instrument for case resolution would restore competitive equilibrium to the market most quickly and most effectively?

Persons under inquiry may determine, in light of the above factors, that it is in their interest to explore the possibility that the case can be resolved

using one of the alternative instruments. If this is the case, they may contact the Director in writing indicating their desire to discuss the circumstances under which the Director will proceed with his inquiry. The Director may choose to proceed with his inquiry during the course of discussions and persons under inquiry will be expected to adhere to a consultation schedule that will not delay the development of the Director's inquiry in the event that consultations are not successful. In those cases where the matter has been referred to the Attorney General contact can be made with his office.

Confidentiality and Public Disclosure of Information on Case Resolution

The Director must respect a number of statutory requirements in deciding how much information about matters under the Act he should disclose to the public. Section 10 of the Act requires the Director to conduct inquiries in private and section 29 restricts the disclosure of certain types of information. The Act also requires the Director to report annually to the Minister on proceedings under the Act and requires the Minister to table the report before Parliament.

Working within these statutory provisions, the Director must balance private and public interests. Parties involved in matters being reviewed under the Act typically have an interest in preserving the privacy of their business affairs. On the other hand, public confidence is promoted by

timely disclosure of information about activities under the Act. Such information may also help the public understand how the Act applies to their own business affairs.

Within the parameters described above, the Director intends to make available to the public information about the resolution of cases under the Act. Persons involved in discussing the resolution of a case with the Director may wish to explore with him the extent to which information about the case will be made public.

Those wishing to obtain copies of this Bulletin or of other publications of the Director of Investigation and Research may write directly to the:

The Bureau of Competition Policy
Consumer and Corporate Affairs Canada
Ottawa, Ontario K1A 0C9
Telephone: (819) 994-0798

Alternatively, requests may be made through any of the Regional Offices of the Director listed below.

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Publications of the Director of Investigation and Research

- Annual Report of the Director of Investigation and Research
- Misleading Advertising Bulletin (published quarterly)
- Speeches (issued periodically)
- Prenotification Information Kit
- Information Bulletins

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Publications du Directeur des enquêtes et recherches

- Rapport annuel du Directeur des enquêtes et recherches
- Bulletin de la publication trimestrielle (publié par l'Institut de la statistique)
- Bulletin de la publication sur les prévisions de fusionnement
- Bulletin d'information sur les publications (parution périodique)
- Pochette d'information sur les publications (parution périodique)
- Bulletin d'information sur les publications (parution périodique)
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affaires menées en vertu de la Loi. Les personnes qui discutent du règlement d'un cas avec le Directeur auront peut-être intérêt à examiner avec lui dans quelle mesure les renseignements sur l'affaire seront rendus publics.

La L^oti. Les paragraphes 34(1) ou 34(2), selon les circonstances de chaque cas et après évaluation des facteurs énumérés dans la procédure secti^{on} du présent bulletin. Les ordonnances des tribunaux rendues en vertu des paragraphes 34(1) ou 34(2) peuvent être rendues avec ou sans le consentement des parties.

La déci^{sion} de demander une ordonnance d'interdiction pour régler une affaire relève du Procureur général. Les représentants du Procureur général consultent généralement le Directeur sur des questions telles que les conditions appropries d'une ordonnance proposée. Finalement, c'est aux tribunaux qui, il revient de déterminer si une ordonnance doit être imposée.

En outre, la L^oti sur la concurrence revoit expressément le règlement des contestations examinables à l'aide d'ordonnances par consentement l'orsqu'une autre, la L^oti sur la concurrence.

Le Directeur peut lui recommander de demander une ordonnance par conséquentement confirmer l'acte paragraphe 34(2) de la Loi. Il ne s'agit pas là d'une nouvelle procédure, car elle a été utilisée pour résoudre plusieurs questions et de la Loi sur la concurrence. Le Directiveur appuie l'application de ces ordonnances dans un vaste éventail de situations en vue de corriger efficacement et rapidement certains types de comportements.

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REAGIR AUX CAS DE NON-COMPLIANCE

Le Directeur peut, dans certaines circonstances, accepter des engagements écrits qui parent à la nécessité de présenter une demande au Tribunal de la concurrence ou de confier une affaire au Procureur général. Depuis le début des années 60, le Directeur a, à

motifs de demander une ordonnance corrective pour une question examinable ou une personne a contrevenu ou omis

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conduite ou même de la discussion avec le directeur, mais elles peuvent profiter de l'occasion pour leur faire. Après un contact d'information avec le directeur peut devenir pour lui une période d'examens, d'exercer une surveillance surveiller son examen, de décider de poursuivre le dossier ou fermer le dossier.

certificat de déclinaison préalable

conducte ou même de discuter de la question avec le directeur, mais elle peut profiter de l'occasion pour le faire. Après un contact d'information, le directeur peut décider de poursuivre son examen, d'exercer une surveillance pendante une période raisonnable ou de fermer le dossier.

Malgré les efforts pour accroître la conformité volontaire à la loi sur la concurrence, des cas de non-conformité continueront de se présenter. Voilà pourquoi le personnel du Bureau surveille le marché afin que le directeur connaisse les infractions

SURVEILLEZ LA CONFORMITÉ

Il arrivera que les personnes qui planifient un fusilllement recevoiront du Directeur du Comté de L'Assurance qui, en vertu de l'article 102 de la Loi, leur transmettent une contestation pas leur transaction. En vertu de l'article 102 de la Loi, le Directeur peut délivrer un certificat de décision préalable lorsqu'une ou plusieurs parties à une transaction proposent le convainquent qu'il n'aura pas de motifs suffisants pour faire une demande d'ordonnance corrective au Tribunal de la concurrence en vertu de l'article 92 de la Loi. Si le Directeur décide de ne pas délivrer de certificat pour un projet de fusionnement, il peut quand même donner un avis sur le fusonnement dans lequel il se prononce favorablement à ce sujet dans les renseignements à ce sujet dans la bulle de l'information n° 2 portant sur les certificats de décision préalable.

Contact d'information

Les autres conseils peuvent étre valable, car leur fiabilité dépend de l'importance des renseignements fournis. Les notifications d'opposition nécessaires servent à ajouter des avis à ces avis.

Les avis consultatifs peuvent étre donnés sous forme orale ou écrite. Les avis oraux peuvent généralement être fournis de façon relativement rapide. Selon la complexité des questions en cause et les ressources disponibles, la préparation des avis écrits peut demander beaucoup plus de temps.

consultatifs sont données par rapport à un ensemble de faits. Si les détails de la plan mises en oeuvre sont différents au Directeur, ou si les conditions changement d'une fagon qui modifie-
tions de la situation de sauveur si la mise en oeuvre de la pratique ou du plan d'exploitation propose l'util donner en vertu de la loi. Le Directeur peut également de commenter une enquête en vertu de la loi. Le Directeur peut être
donner un avis ultérieur en réponse à des propositions revues.

Dans chacune de ces situations, le Directeur fournit un avis sur la question de sauveur si la mise en oeuvre de la pratique ou du plan d'exploitation propose l'util donner en vertu de la loi. Le Directeur peut également de commenter une enquête en vertu de la loi. Le Directeur peut être
donner un avis ultérieur en réponse à des propositions revues.

Le Directeur pourra, par exemple, donner un avis consultatif dans les cas suivants :

o une entreprise qui voudrait sauver si les conditions de sa nouvelle politique de rabais violerait les dispositions sur la discrimination dans rendement du, il entend mettre ses annonces n'enfreint pas les dispositions sur la publicité trompueuse de la loi ; une entreprise qui aimerait assurer qu'un achat de groupes saurait pas si des achats qui ne ferait pas de problème au regard des dispositions de la loi sur la discrimination sur le prix ou les complots ; une association d'acheteurs qui se démarquerait si un contrat propose serait assujetti à la loi.

FACILITATE LA CONFORMITE

LE Programme d'éducation et de communiquer la situation du Directeur est complété par les avis consultatifs et les contacts d'information visant à faciliter la conformation à la Loi dans des situations particulières. Des certificats de déclaration préalable sont égalemment offerts aux partis à un fusillonnement proposé qui veulent avoir l'assurance que la transaction ne donnera pas lieu à des procédures en vertu des dispositions sur la concurrence.

AVIS CONSULTATIFS

Le Directeur facilite la confortation fournitissant des avis consultatifs à ceux qui souhaitent éviter de centre-venir à La Loi. Dans le cadre de ce programme, qui s'appelle à l'aparavant le programme de confortité, le Directeur invite des dirigeants d'entreprise, des avocats et d'autres personnes à demander un avis pour savoir si la mise en oeuvre d'un plan d'exploitation ou d'une pratique qui donne à l'exploitation des motifs pour commencer une enquête aux termes de la Loi. Les avis tiennent compte de la jurisprudence, d'opinions antérieures et des politiques du Directeur. Ceux qui demandent un avis sont pas liés et restent libres mais, adopter la pratique ou le plan visé. Mais, ce faitant, il s'agit d'être conscient des faits devant les tribunaux ou être contesté devant les tribunaux ou même, le Directeur n'est pas tenu de faire la concurrence. De même, le Tribunal de la concurrence, par les avis qu'il émet. En outre, les avis du plus que ses successeurs, par les avis que, il émet.

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au Parlement. Des communiqués de presse exposant l'évaluation et le règlement de certaines affaires. Des allocations prononcées par le Directeur et des cadres supérieurs du Bureau, une liste des jugements relatifs à la Loi sur la concurrence et une pochette d'information sur les préavis de fusionnement.

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Le Rapport annuel du Directeur remis au ministre de La Consommation et des Corporations, qui présente des renseignements sur Les procédures entreprises en vertu de la Loi au cours de l' exercice précédent. Ce rapport est déposé au Parlement.

Des bulletins d'interprétation renfermant des résumés d'avis consultatifs qui servront à redigés de fagon à protéger les renseignements confidentiels, comme l'identité des participants. L'accident mis sur des parties. Exemples précis devrait faire de ces publications qui contiennent des informations d'information à utile aux bulletins d'information à caractère plus général.

Le présent Bulletin décrit les quatre principaux volets de l'approche axée sur la conformité du, à adoptée le directeur et qui visent à :
encourager la conformité à la Loi par l'entremise d'un programme de communication et d'éducation ;
faciliter la conformité à la Loi au moyen d'avis consultatifs, de contacts d'avis consultatifs, de occasions législatives et de publications réglementaires.
surveiller la conformité à la Loi ;
et

INTRODUCTION ET APÉRÉU

L'objet de la loi sur la concurrence, énoncé à l'article 1.1, est le suivant :

La présente loi a pour objet de

1. efficience de l'économie canadienne, d'améliorer les chances de détenir, d'augmenter l'adéquation aux besoins canadiens aux marchés mondialisés tout au long de l'adaptation.

mayenne entrepris une chance honnête de participer à l'économie canadienne, de même que dans le but d'assurer aux consommateurs des prix compétitifs et un choix dans les produits.

Le DiRECTEUR des enquêtes et recherches doit s'assurer que La Loi est appliquée de façon équitable, efficace et rapide. Historiquement, l'application de La Loi et son effet dissuasif envers les agissements anti-concurrentiels ont surtout consisté à mener des enquêtes sur les infractions à La Loi en vue d'intenter des poursuites et d'imposer des sanctions pénales. Dans plusieurs cas, cette approche continuera d'être une des principales méthodes d'applicati-
tion de La Loi. Toutefois, il est possible de faire évoluer la législation pour favoriser la concurrence de façon plus efficace et sûre, et plus rapidement une autre chose : à motinnes frais, en empêchant une

La Loi ; et
conformité à la promotion de la
s'appuie sur une gamme
de réponses aux comportements non
conformes, notamment les poursuites
judiciaires.

Le Directeur croit que la majorité des
gens d'affaires respectent la Loi sur
la concurrence, si l'insécurité
comment elle s'appuie à leurs acti-
vités. Il cherche donc à encourager la
programme de communauté et d'éduca-
tion. En outre, il facilite la confon-
mité dans des situations particulières
au moyen d'avvis consultatifs, de
contacts d'information et de certi-
ficates de décision préalable.

Une survéillance attentive des
conducteurs sur le marché complète les
efforts déployés par le Directeur pour
encourager et faciliter la conformité à la
Loi. Lorsqu'il estime qu'il y a eu
un infracteur à la Loi ou qu'il a eu
motifs de demander une ordonnance
corrective pour une question
d'un large éventail d'instruments,
il peut régler les cas à l'aide
d'un panel des visiteurs d'enquête aux pour-
suites judiciaires. La souplese
qu'offre cette approche permet au
Directeur, lorsqu'il fait respecter la
Loi : .

Le Présent Bulletin donne des conseils pratiques sur l'actualité politique de la confédération du Directeur et ne constitue aucunement un exposé qui lie le Directeur. Toutes les décisions relatives à l'applications des circconscriptions partielles en fonction de la loi sont prises à l'initiative des circonscriptions partielles à chaque cas. Les lecteurs doivent se reporter au texte de loi lorsqu'e des questions de droit se posent.

Pour obtenir des exemplaires supplémentaires du présent Bulletin ou de plus amples renseignements sur les sujets qui y sont abordés, les lecteurs peuvent communiquer avec la Direction du Bureau de la Politique de la coordination de la conformité et de la coordination rence, Consommation et Corporations Canada, Ottawa (Ontario) K1A 0C9, ou composer le (819) 994-0798. Par ailleurs, les lecteurs peuvent s'adresser à l'un des bureaux énumérés à la fin du Bulletin, à l'adresse ou au numéro de téléphone indiqués.

Le Directeur des endeulements et rechercches est chargé d'appliquer et de faire respecter La Loi sur La concurrence qui vise à préserver et à favoriser La concurrence au Canada. Le présent Bulletin fournit des renseignements sur l'approche qu'a adoptée Le Directeur pour promouvoir et assurer Le respect des dispositions de La Loi sur La concurrence. Le Directeur dirige Le Bureau de La politique de concurrence, qui fait partie du ministère fédéral de La consommation et des corporations. Comme La Loi sur La concurrence confère des pouvoirs et des fonctions au Directeur, et non au Bureau, Le présent Bulletin mentionne souvent Le Directeur. Les Lecteurs doivent toute fois savoir qu'un bon nombre des activités attribuées au Directeur dans le présent Bulletin sont généralement exercutées en son nom par un Sous-directeur des endeulements et rechercches nommé en vertu de La Loi ou par des membres du personnel du Directeur qui travaillent au Bureau de La politique de concurrence.

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